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IN THE

Supreme Court of the United States

October Term, 1966

NO. 927

CHINA UNION LINES, LTD., MITSUBISHI INTERNATIONAL CORPORATION, ET AL., LAN JING-CHAU, ET AL., ARMEMENT DEPPE, S. A., ET AL., *Petitioners,*

versus

A. O. ANDERSEN & CO., AMERICAN CYANAMID COMPANY, ET AL., *Respondents*

NO. 933

CHINA UNION LINES, LTD., *Petitioner,*

versus

A. O. ANDERSEN & CO., AMERICAN CYANAMID COMPANY, ET AL., *Respondents*

NO. 934

LAN JING-CHAU, ET AL., *Petitioners,*

versus

A. O. ANDERSEN & CO., AMERICAN CYANAMID COMPANY, ET AL., *Respondents*

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF FOR A. O. ANDERSEN & CO., AS RESPONDENT, IN OPPOSITION

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INDEX

		Page
I.	Statement of the Case	1
II.	Questions Presented for Review	4
III.	Conclusion	6

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I.

STATEMENT OF THE CASE

Despite their bulk the Petitions of these Petitioners only reiterate their factual arguments as to why they should prevail, and for the reasons previously set forth so fully

and completely, both by the Trial Court and the United States Court of Appeals for the Fifth Circuit, Respondent, A. O. Andersen & Co., respectfully prays that all Petitions for Writ of Certiorari be denied.

In a maritime tragedy of considerable complexity occurring in the Houston Ship Channel on the night of November 8, 1961, the Norwegian Tanker M/V BEREAN which had gone aground on her side of the channel in a futile attempt to avoid collision was struck and holed somewhat behind her stem by the outbound M/V UNION RELIANCE which had swung to its port side of the channel out of control as a result of a steering gear failure. The vessels caught fire, and heavy loss of life, severe personal injuries and property damage ensued.

The litigation was extensive with numerous actions and cross-actions being filed on behalf of the two vessels, their respective cargoes, the Houston Pilot conning the M/V UNION RELIANCE who lost his life and some of the Chinese crew members. After an extensive trial which lasted approximately a month, the Trial Court assessed sole fault for the casualty against the M/V UNION RELIANCE and its owners and denied their Petition For Exoneration From or Limitation of Liability. In detailed Findings of Fact and Conclusions of Law entered by the Trial Court, the M/V BEREAN and its owners, A. O. Andersen & Co., were exonerated from any fault contributing to the collision, having taken every reasonable means to avoid the casualty after her pilot became aware of the danger. The Court specifically found that the M/V BEREAN was not at fault and that it violated no statute or Coast Guard regulations in loading and carrying acrylonitrile in her forward wing tanks. (Trial Court Finding of Fact No. 40). Recovery against China Union Lines was

decreed in favor of all of those litigants who sustained material losses as a result of the casualty including Mrs. Lucy Duncan, surviving widow of Houston Ship Channel Pilot Duncan, the legal representatives or next of kin of the deceased members of the M/V UNION RELIANCE and those members of the crew who received personal injuries or loss thereby, American Cyanamid Company as owner of the cargo on board the M/V BEREAN, Mitsubishi International Corporation, et al, as owners of the cargo on the M/V UNION RELIANCE, and the United States of America for expenses incurred in clearing the Houston Ship Channel following the casualty.

Dissatisfied with the result obtained in the Trial Court, China Union Lines appealed to the United States Court of Appeals for the Fifth Circuit, being joined by Mitsubishi, the Consul General of the Republic of China on behalf of the injured and deceased Chinese seamen and Armement Deppe, S.A., which had failed to sustain its detention claim against the M/V BEREAN. Again, after an exhaustive review of the extensive record of the trial, the three Circuit Judges were unanimous that the Trial Court's Findings of Fact and Conclusions of Law as to the cause of the collision were eminently correct and that the M/V BEREAN and its owner, A. O. Andersen & Co., were not at fault. Although one of the Court dissented in part, believing that the case should be reversed and remanded as to some parties for further evidence as to the role acrylonitrile played in the loss of life and personal injuries suffered by those on the M/V UNION RELIANCE, the majority opinion minutely analyzed this phase of the record (China Union Lines Petition, Appendix A, pp. 40-42) in the light of the Trial Court's actions and properly concluded that they fully supported the Findings of Fact and Conclusions of Law ultimately entered.

II.

QUESTIONS PRESENTED FOR REVIEW

Despite the multiplicity of parties, the voluminous record of fourteen printed volumes totaling 5,276 pages and the numerous issues raised by Petitioners as constituting a basis for review, there emerged certain fundamental considerations that capsule why these Petitions for Writ of Certiorari should be denied.

The case turned in its every aspect purely upon fact findings of fault in a specific ship collision. Certainly, none of the criteria listed in this Court's Rule 19 are remotely involved, nor would this Court's review of the record and opinion as to the facts it presents be of any special value to pending or future litigation.

As both the Trial Court and the Court of Appeals concluded without the slightest reservation, the sole reason for the collision and all resulting damages was the unseaworthiness of the M/V UNION RELIANCE and the gross negligence of its officers and crew. It thereafter followed as the night the day that China Union Lines was to be held solely liable for all damages without limitation. A review of the Trial Court's Findings of Fact and Conclusions of Law as well as the opinion of the Court of Appeals reveals the thoroughness with which both Courts combed the record prior to reaching their respective decisions, a record which contained no new questions of law, but only extensive issues of fact.

All aggrieved parties have been awarded full recovery against the vessel owner, China Union Lines, which currently owns and operates seventeen vessels that frequently touch at United States ports according to Lloyds' Register.

Such adjudication applies equally to the other two Petitioners, Mitsubishi International et al, owners of the cargo on the M/V UNION RELIANCE, and Lan-Jing-Chau, et al on behalf of the Chinese seamen. Petitioner China Union Lines is distressed with the inevitable conclusions reached by two Courts on these collision facts, but this constitutes no valid basis for prolonging this already lengthy litigation by attempting to implicate innocent parties to share the losses occasioned solely by the faults and unseaworthiness of the M/V UNION RELIANCE.

Respondent A. O. Andersen & Co. respectfully submits that the Court of Appeals was correct in concluding that each of the parties received a fair and impartial trial and that the Trial Court's findings were amply supported by substantial evidence contained in the record. There is no conflict with a decision of another Court of Appeals, nor is this decision in conflict with Federal Law or with applicable decisions of this Court.

III.

CONCLUSION

The Petitions for Writ of Certiorari should be denied in their entirety.

Respectfully submitted,

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